

SUFFOLK COUNTY LEGISLATURE

SPECIAL MEETING

**SIXTEENTH DAY
OCTOBER 27, 2004**

**MEETING HELD AT THE WILLIAM H. ROGERS LEGISLATURE
BUILDING IN THE ROSE Y. CARACAPPA LEGISLATIVE AUDITORIUM
725 VETERANS MEMORIAL HIGHWAY, SMITHTOWN, NEW YORK**

MINUTES TAKEN BY

LUCIA BRAATEN, COURT STENOGRAPHER

[THE MEETING WAS CALLED TO ORDER AT 9:39 A.M.]

P.O. CARACAPPA:

Good morning, Mr. Clerk. Please, call the roll.

(Roll Called by Mr. Barton, Clerk)

LEG. CARACCILOLO:

Here.

LEG. SCHNEIDERMAN:

(Not Present)

LEG. O'LEARY:

Here.

LEG. VILORIA•FISHER:

(Not Present)

LEG. LOSQUADRO:

Present.

LEG. FOLEY:

(Not Present)

LEG. LINDSAY:

Here.

MR. MONTANO:

Here.

LEG. ALDEN:

Here.

LEG. NOWICK:

Here.

LEG. BISHOP:

Here.

LEG. MYSTAL:

Here.

LEG. BINDER:

Here.

LEG. TONNA:
Oh, I'm here.

LEG. COOPER:
(Not Present)

D.P.O. CARPENTER:
Here.

P.O. CARACAPPA:
Here.

P.O. CARACAPPA:
Legislator Mystal is here.

MR. BARTON:
Legislator Mystal. Legislator Viloría•Fisher.

P.O. CARACAPPA:
She's here.

LEG. VILORIA•FISHER:
Yes.

MR. BARTON:
15 present. (Not Present at Roll Call: Legs. Schneiderman, Foley and Cooper)

P.O. CARACAPPA:
Thank you, Mr. Barton. Everyone, please rise for a salute to the flag, led by Legislator Montano.

(Salutation)

P.O. POSTAL:
Please, be seated.

LEG. ALDEN:
I have a request, Mr. Presiding Officer.

P.O. CARACAPPA:
Yes, Legislator Alden.

LEG. ALDEN:
Offer a request for a moment of silence ••

P.O. CARACAPPA:
Please.

LEG. ALDEN:

•• for those that have given their lives in service to this country in defense of freedom, and those that are serving right now that maintain and preserve that freedom.

(Moment of Silence)

Thank you.

P.O. CARACAPPA:

Also, we have a moment of silence, forgive me for skipping over this, for _Daniel Ponte_ , who was a former Dean of the Suffolk County Community College. I'd ask for you to as always pray for his family.

(Moment of Silence)

Thank you. Mr. Barton, please read the Special Meeting notice.

MR. BARTON:

Yes. Good morning, Mr. Chairman, again. Before each Legislator, and received by my office, dated October 25th, 2004, "To all Legislators, from Joseph T. Caracappa, Presiding Officer." "Please, be advised that a Special Meeting of the Suffolk County Legislature will be held on Wednesday, October 27th, 2004, at 9:30 a.m., in the Rose Caracappa Legislative Auditorium, located at the William Rogers Legislature Building, 725 Veterans Memorial Highway, Hauppauge, New York, pursuant to Section 2•6(B) of the Suffolk County Administrative Code for the following purpose: A one•hour public portion, followed by three additional items. It's signed by the Presiding Officer.

P.O. CARACAPPA:

Thank you.

LEG. SCHNEIDERMAN:

Mr. Clerk, would you mark me here?

MR. BARTON:

Yes.

P.O. CARACAPPA:

Thank you. We're going to go •• any other statements, presentations by Legislators at this point in time? Okay. We're going to go right to the public portion. I have no cards. Anyone wishing to be heard? Motion to close public portion by myself.

LEG. TONNA:

Second, second, second.

P.O. CARACAPPA:

Second by •• who was the second? Oh, Legislator Tonna emphatically seconds it. All in favor? Opposed? Abstentions? Public portion is closed.

MR. BARTON:

16.

P.O. CARACAPPA:
Moving on to the agenda.

LEG. ALDEN:
Mr. Presiding Officer, I have a request.

P.O. CARACAPPA:
I recognize Legislator Alden.

LEG. ALDEN:
I would request a ten•minute recess, so I can confer with my fellow Republican Legislators.

LEG. TONNA:
On what?

LEG. ALDEN:
On the agenda for today.

P.O. CARACAPPA:
Could we do it in five? Five minutes?

LEG. ALDEN:
Five minutes, that's fine.

P.O. CARACAPPA:
Would everybody be •• a real five•minute break, would that be okay? Just a nod.

LEG. SCHNEIDERMAN:
Yes.

P.O. CARACAPPA:
Five, literally.

LEG. TONNA:
I'm leaving in 15.

LEG. LINDSAY:
You guys are killing me, I swear to Christ.

P.O. CARACAPPA:
We'll be done. Billy, five, five minutes, five.

LEG. TONNA:
This is ridiculous. Why couldn't people meet beforehand?

P.O. CARACAPPA:
This is a surprise to me. Five minutes. We'll request •• we'll honor the request of Legislator Alden, and we'll be back at 9:48.

[THE MEETING WAS RECESSED AT 9:43 A.M. AND RESUMED AT 9:56 P.M.]

We're ready. I apologize, I apologize for the extra time. Okay. There's no need for a roll call; right? We're here. Okay. Back to the agenda. Item Number 6; is there a motion? Legislator Carpenter?

D.P.O. CARPENTER:

I have 4.

P.O. CARACAPPA:

On mine there is. Yeah. Resolution Number 9 •• override the veto on Resolution 988.

D.P.O. CARPENTER:

Yes, Mr. Presiding Officer. I would like to make a motion to override •• to override the veto of Resolution Number 988. And just draw everyone's attention, there is a copy of an editorial that basically hits some valid points.

The Task Force has been meeting. Actually, the Deputy Commissioner of Police is chairing the Task Force, and we really have been making progress. And all we're asking, because there was a delay in getting the Task Force started, is to extend the deadline of the report until April, to just give it a couple of months. So, I'd just ask for everybody's support on the override. Thank you.

P.O. CARACAPPA:

There's a motion to override. Is there a second?

LEG. O'LEARY:

Second.

P.O. CARACAPPA:

Second by Legislator O'Leary. On the motion? Roll call.

(Roll Called by Mr. Barton, Clerk)

D.P.O. CARPENTER:

Yes.

LEG. O'LEARY:

Yes.

LEG. COOPER:

Pass.

LEG. TONNA:

To override, yes.

LEG. BINDER:

Yes.

LEG. MYSTAL:

No.

LEG. BISHOP:
Yes.

LEG. NOWICK:
Yes.

LEG. ALDEN:
Yes.

LEG. MONTANO:
Pass.

LEG. LINDSAY:
Yes.

LEG. FOLEY:
No.

LEG. LOSQUADRO:
Yes.

LEG. VILORIA•FISHER:
No.

LEG. SCHNEIDERMAN:
Yes, to override.

LEG. CARACCILO:
Same vote, yes.

P.O. CARACAPPA:
Yes.

LEG. COOPER:
No.

LEG. MONTANO:
No.

MR. BARTON:
12.

D.P.O. CARPENTER:
Thank you.

P.O. CARACAPPA:
It's overridden. Is there a motion to discharge from committee I.R. Number 1932? I'll make that motion.

LEG. FOLEY:

Explanation.

P.O. CARACAPPA:

These are some contract agencies that were lost in the shuffle. Yeah we'll do that in a second, because I would just like to get this discharged. You have it before you.

LEG. FOLEY:

Second the motion.

P.O. CARACAPPA:

Yeah, okay. Second by Legislator Foley. All in favor? Opposed?

LEG. TONNA:

Oh, this is •• this is a motion to discharge it?

P.O. CARACAPPA:

Discharge it, yeah. It's just a few contract agencies that we'd like to move.

MR. BARTON:

17.

P.O. CARACAPPA:

It's now before us. I make a motion to waive the one•hour rule as it relates to this ••

LEG. TONNA:

•• I'll second that.

P.O. CARACAPPA:

•• discharge. Second by Legislator Tonna. All in favor? Opposed? Abstentions?

MR. BARTON:

17.

P.O. CARACAPPA:

It is now eligible. Motion by Legislator Tonna to approve, second by myself.

LEG. TONNA:

Just on the motion.

P.O. CARACAPPA:

On the motion, Legislator Tonna.

LEG. TONNA:

Just ask Legal Counsel. This is with all in the budget, and everything else, right? This is •• this is not any straight adds or anything else, this was all •• this was part of the four times a year, right, where we could ••

P.O. CARACAPPA:

This is Phase 3.

MS. KNAPP:

After consultation with the Director of Budget Review, the answer is yes.

LEG. TONNA:

Okay, great. Thank you very much.

P.O. CARACAPPA:

These are Legislative initiatives. All in favor? Opposed? Abstentions?

MR. BARTON:

17.

P.O. CARACAPPA:

Thank you. There's a motion by Legislator Montano to override Resolution 1007 of '04, which was originally 1838, seconded by myself. On the motion?

LEG. ALDEN:

On the motion.

P.O. CARACAPPA:

On the motion, Legislator Alden.

LEG. ALDEN:

I just •• a couple of things I want to put on the record about this piece of legislation, just in case we haven't considered it.

Number one, and first and foremost, even if you ignore the fact that it's unconstitutional to do this, what we've done is we've reached back to a period of time where some of these houses were actually taken eight years ago by the County. We're going to go back in time, and just for a few people, not everybody that was in the same circumstances, we're going to just, for a few people, we're going to reverse that and we're going to give them some money. Well, there's a couple of problems with that. Once they're taken and once the County takes title to them, they're owned by the people of Suffolk County. So, now what you're doing is you're taking property that's owned by the people of Suffolk County and now you're going to turn around, you're going to sell that, and you're going to give the proceeds to a few. That's a little bit of a problem, a Constitution problem.

Second thing is I don't see in the budget, anything in the budget that states where the money •• well, you all put the budget together last year. This was •• this money from this auction was included in the budget. So, I don't see anyplace in the budget where it says that we're going to •• now we're going to reduce the number of Child Protective Service agents, we're going to reduce the number of people in our •• guarding our prisoners in the jail, we're going to reduce the people, the number of people that service folks over at DSS. So, I don't see where those cuts are to make up for the money that we're going to give away illegally, I don't see that in the budget.

I do see a big problem going back in time and creating different classes of people. If we wanted to fix this and we wanted go forward, I think that what we should do today is start a procedure

whereby, even over in real estate, they start counseling people. So, if they're going to lose their house, start counseling them, all their different options. And then, in a legal fashion, put together something that from this day forward, or the day that it passes forward, that we will give people back their equity in their house, similar to when a mortgage is foreclosed upon. Let that be a judicial proceeding.

There's a hundred million dollars sitting out there that the taxpayers of Suffolk County have had to pay on account of other people not paying their taxes. Is that fair to add another burden onto those people, the people that pay their taxes on time, the people that are honest, law-abiding citizens? Are we going to now put another burden on them? Yes, we are, if we pass this. We haven't even given consideration to the fact that Real Estate can't really do the job that they're supposed to do right now.

Is there anything in this legislation that puts an extra person over there? We expect Real Estate to close on properties, and close on open space, and buy farms, and things like that, but we don't have enough people over there, and now we're going to give them an extra burden. Now, they've got to go back in time and recreate situations, which is guesswork at best. Thank you.

LEG. CARACCILO:
Mr. Chairman.

P.O. CARACAPPA:
Thank you, Legislator Alden. Legislator Caracciolo.

LEG. CARACCILO:
Thank you. I would note that this is probably one of the better veto messages that I've reviewed since I've been a County Legislator. And I'd like to have the representatives from the Law Department come forward, because, as the Executive notes, there are ••

LEG. TONNA:
Come on.

LEG. CARACCILO:
There are legal issues here and I'd like to know who in the County is going to enforce this resolution, if, in fact, the veto is overridden today. So, I'd like the representative from the Law Department.

P.O. CARACAPPA:
Is that a request, Legislator Caracciolo?

LEG. CARACCILO:
Yeah, yes.

MS. CAPUTI:
Good morning.

LEG. CARACCILO:
Just identify for the record your name.

MS. CAPUTI:

Yes, I am. I'm Jacqueline Caputi from the County Attorney's Office.

LEG. CARACCILOLO:

Thank you.

MS. CAPUTI:

Yes.

LEG. CARACCILOLO:

Jacqueline, are you the author of this veto message?

MS. CAPUTI:

No, I am not, but I have read it.

LEG. CARACCCIOLO:

And who would that author have been?

MS. CAPUTI:

I imagine it's a member of the County Executive's staff in conjunction with Lynne Bizzarro of our office. She probably consulted with him on it.

LEG. CARACCILOLO:

So, you're familiar with the legal concerns or objections that are raised on Page 1 of the veto message?

MS. CAPUTI:

Yes, I am.

LEG. CARACCILOLO:

Could you just elaborate as to the first two of those provisions dealing with Article 8, Section 1 of the New York State Constitution first?

MS. CAPUTI:

Okay. As we stated at the General Meeting in September, the New York State Constitution forbids counties from making gifts of public monies to private individuals. And because once these properties of a tax deed is taken by the County, they become County property, and any revenues that are obtained from the sale of the properties are County funds and belong to the taxpayers. So, in an effort to return the monies to the prior owners, you would be giving a gift to private individuals from public funds, which is prohibited under that section of the Constitution.

LEG. CARACCILOLO:

Legislatively, can this Legislature enact a local law that supersedes the State Constitution.

MS. CAPUTI:

No, it may not.

LEG. CARACCILOLO:

That said, what enforceability would this resolution have?

MS. CAPUTI:

Well, it would have to be challenged. It would •• you know, it would have a presumption of validity if it were passed, but I think there would have to have some kind of a legal challenge made to say that it's not being put into place and implemented.

LEG. CARACCILOLO:

Okay. So, if it's overridden, the Executive •• maybe Mr. Zwirn could answer this question. Ben, if you could come up.

P.O. CARACAPPA:

Mike.

LEG. CARACCILOLO:

I don't want to see us get •• become enmeshed in a ••

P.O. CARACAPPA:

Legislator Caracciolo.

LEG. CARACCILOLO:

Yes.

P.O. CARACAPPA:

If you just could, just go through the Chair when you ask people to come up.

LEG. CARACCILOLO:

Oh, sure, okay.

MR. ZWIRN:

I'm sorry.

P.O. CARACAPPA:

Just for procedure purposes, or else we'll have a free•for•all.

LEG. CARACCILOLO:

No, I understand. Mr. Zwirn, is it your understanding based on perhaps conferences or conversations in the Executive Office that if, in fact, this resolution is overridden, that there is an intent to carry out the spirit of this resolution?

MR. ZWIRN:

I think that The County Executive's Office would challenge the validity.

LEG. CARACCILOLO:

Okay. I didn't know that, but I suspected, knowing Mr. Levy as long as I have, both as a Legislators and an Assemblyman, and now as the Executive, that he has a long streak in his •• in his being to challenge things that he believes are illegal and unconstitutional. He challenged this Legislature back in the mid '80's •• I'm sorry, late '80's and early '90's when he felt legislation was passed. That said, there is absolutely no way I could support this resolution. Thank you.

P.O. CARACAPPA:

Thank you. Legislator Montano.

LEG. MONTANO:

Yes. Counsel, you were at the meeting when this resolution initially passed, were you not?

MS. CAPUTI:

Yes, I was.

LEG. MONTANO:

And you partook or were you privy to the discussion that dealt with whether or not the bill, as written, and the distribution of proceeds would constitute a gift from County? And were you aware, or did you participate in the conversation when, in fact, our Counsel indicated very clearly that the cases you cited to support the argument were not cases that, in fact, supported the argument that this was a gift? And weren't you there when it was clearly put forward that the proceeds to be distributed were only proceeds that had accumulated to the owner of the property up to the time of the taking and not subsequent? Now, do you have any written memoranda with you with respect to your legal opinion at this point backing up the fact that you maintain that the bill, as written, is unconstitutional?

MS. CAPUTI:

No, we haven't prepared any written ••

LEG. MONTANO:

Why is that?

MS. CAPUTI:

•• memorandum. As far as I know, it wasn't requested of our office, but I'm just ••

MR. MONTANO:

Well, I'll differ with you on that, because I indicated very clearly to your office that if you were going to take the position, we would like •• I would like to have something in writing supporting your position. Be that as it may, you have nothing with you today?

MS. CAPUTI:

No, I do not.

MR. MONTANO:

So, we're really still going on the same argument as to whether or not this constitutes a gift, or whether or not it's actually something that, you know, as we already know, has a presumption of legitimacy. Mr. Zwirn, you indicate that the County Executive would challenge the •• in other words, what I believe you're indicating is that if this bill passes, the County Executive intends not to enforce it?

MR. ZWIRN:

He will challenge the bill, is my expectation. I think you can tell that just from the tone of the veto message. They feel •• the County Executive feels very strongly about this.

MR. MONTANO:

So do I.

MR. ZWIRN:

And I •• and I understand that, and I think he understands that as well.

LEG. MONTANO:

Let me say this, Mr. Zwirn. You also •• there's another issue that came up in this veto message, which didn't •• which did not or was not brought up at the time the bill passes, that is the vested rights of the County to proceeds. Are we making this stuff up as we go along, or what are we doing here, because these arguments are new to me. Page 1.

MR. ZWIRN:

With regard to the fact that the bill was retroactive?

LEG. MONTANO:

Well, I heard the comment earlier that this was one of the better veto messages. I absolutely disagree, I think this is one of the poorer veto messages. But, in any event, are those the two arguments, the two arguments that you raised with respect to the passage or the override, attempted override of this bill? One is that it's unconstitutional, as you maintain, and, number two, that we shouldn't pass it, because the County Executive is adamant and is going to challenge it.

MR. ZWIRN:

No.

MR. MONTANO:

Are there any other reasons?

MR. ZWIRN:

There are budgetary concerns that I think that Legislator Alden raised prior to this, and, also, we believe that it would be bad public policy at this point to pass the legislation, especially in light that there was legislation passed to set up a Task Force to examine the tax lien and this auction sale system in its entirety, which Legislator Cooper and Legislator Alden cosponsored.

LEG. MONTANO:

Thank you very much. Nothing further.

P.O. CARACAPPA:

There's a motion and a second. Roll call.

(Roll Called by Mr. Barton, Clerk)

LEG. MONTANO:

Yes.

P.O. CARACAPPA:

Yes.

LEG. COOPER:

No.

LEG. TONNA:

Yes.

LEG. BINDER:
Yes.

LEG. MYSTAL:
Yes.

LEG. BISHOP:
Yes.

LEG. NOWICK:
Yes.

LEG. ALDEN:
Nope.

LEG. LINDSAY:
No.

LEG. FOLEY:
Yes to override.

LEG. LOSQUADRO:
Yes to override.

LEG. VILORIA•FISHER:
Yes.

LEG. O'LEARY:
Yes to override.

LEG. SCHNEIDERMAN:
Yes to override.

LEG. CARACCILOLO:
No.

D.P.O. CARPENTER:
No.

MR. BARTON:
12.

P.O. CARACAPPA:
It's overridden. I'd like to make a motion to waive the rules and lay on the table the following bills, second by Legislator Carpenter. If everyone could just •• we have quite a lengthy list, so I'll just go through them quickly.

LEG. BINDER:

Just say the numbers.

P.O. CARACAPPA:

The following bills: Twenty •• and all of these •• all of these, up until I say, will go to Budget and Finance. 2022, 2023, 2024, 2025, 2026, 2027, 28, 29, 30, 31, 32, 33, 34, 35, 36, 2042, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58. Twenty•seventy•seventy •• 2077, rather, will go to Ways and Means and Consumer Protection. 2079 will go to Budget and Finance, 2080 will go to Environment. It says •• I have Budget and Finance. Yeah. Explain it in a second. 2080, Environment, will go to Environment, Planning and Agriculture. And 2081 will go to Health and Human Services. And 2082, which was just distributed, will go to Budget and Finance.

The reason why some of these are •• most of them are going to Budget and Finance is so that we could act on them tomorrow in committee and to have them available to us as a full body on the 16th of November. These are mostly pay•as•you•go bills, and things that actually •• some of them were waning in •• on our agenda for sometime. We now have the funds to make them happen.

Also, I want to set the public hearing for November 16th at 2:30 p.m., here at Hauppauge, for the purposes of discussing 2081. Okay? There's a motion and a second. All in favor? Opposed? Abstentions? Those bills and that public hearing is set.

MR. BARTON:
17.

P.O. CARACAPPA:

I have no other business to come before the Legislature. Anyone else wishing to be heard on any other matter? Hearing none, we stand adjourned.

[THE MEETING WAS ADJOURNED AT 10:14 A.M.]